

DAVID L. ANDERSON (CABN 149604)  
United States Attorney

HALLIE HOFFMAN (CABN 210020)  
Chief, Criminal Division

MOHIT GOURISARIA (CABN 320754)  
Assistant United States Attorney

450 Golden Gate Avenue, Box 36055  
San Francisco, California 94102-3495  
Telephone: (415) 436-7063  
Fax: (415) 436-7234  
mohit.gourisaria@usdoj.gov

Attorneys for United States of America

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA,	)	CASE NO. CR 20-71406 MAG
	)	
Plaintiff,	)	UNITED STATES' MOTION TO
	)	(1) REVOKE RELEASE ORDER AND ORDER
v.	)	DEFENDANT DETAINED
	)	(2) TEMPORARILY STAY MAGISTRATE
ADRIAN KYLE BENJAMIN,	)	JUDGE'S ORDER GRANTING RELEASE
	)	
Defendant.	)	Judge: Hon. Edward M. Chen
	)	Date: October 14, 2020
	)	Time: 2:30 p.m.
	)	

**Motion to Revoke Release Order and Order Defendant Detained**

The COVID-19 pandemic has caused an exponential rise in the online exploitation of children, especially the enticement of children to produce sexually explicit content.<sup>1</sup> And predators like Benjamin are to blame. Benjamin, a 24-year-old male, has a penchant for exploiting children over the internet. A review of his devices pursuant to a March 2020 search warrant revealed that *at least* three children have

<sup>1</sup> See, e.g., <https://www.scientificamerican.com/article/the-coronavirus-pandemic-puts-children-at-risk-of-online-sexual-exploitation/> (last accessed October 5, 2020); <https://www.cnn.com/2020/05/25/us/child-abuse-online-coronavirus-pandemic-parents-investigations-trnd/index.html> (last accessed October 5, 2020).

1 been victimized by him, enticed and manipulated to produce and send sexually explicit images and  
2 videos. Benjamin also suggested to his minor victims that they meet in person for sex. For purposes of  
3 detention, perhaps most concerning is Benjamin's inability (or simply his refusal) to mend his ways.  
4 Since he was interviewed by the FBI and his devices seized, Benjamin, with the help of his mother and  
5 his mother's boyfriend, acquired new electronic devices, and then continued to entice minors.

6 Benjamin's charged conduct — which carries a presumption of detention — combined with his  
7 decision to continue sexually enticing minor victims, proves by clear and convincing evidence that he  
8 poses a danger to the community that release conditions cannot sufficiently mitigate. Accordingly, the  
9 magistrate judge should not have ordered him released.

#### 10 **I. Procedural History**

11 Benjamin is charged by complaint in this case with Receipt of Child Pornography, in violation of  
12 18 U.S.C. § 2252(a)(2). On October 2, 2020, he made his initial appearance and was arraigned on the  
13 criminal complaint. The government moved for detention at the appearance, and submitted a  
14 memorandum in support of its motion on October 6, 2020. *See* Dkt 8. On October 8, the parties appeared  
15 before the Hon. Magistrate Judge Nathanael Cousins, who ordered the defendant released on a \$25,000  
16 unsecured bond, signed by a surety and requiring the surety also to be a custodian.

#### 17 **II. Legal Standard**

18 On a bail appeal, the Court “should review the evidence before the magistrate and make its own  
19 independent determination whether the magistrate's findings are correct, with no deference.” *United*  
20 *States v. Koenig*, 912 F.2d 1190, 1193 (9th Cir. 1990); *see also* 18 U.S.C. § 3145(a)(1). The record is not  
21 limited to those facts that were presented to the magistrate judge. Rather, this Court should “make its  
22 own ‘de novo’ determination of the facts,” and the “ultimate determination of the propriety of detention  
23 is to be decided without deference to the magistrate's ultimate conclusion.” *Koenig*, 912 F.2d at 1193.

24 The Bail Reform Act of 1984 permits pretrial detention of a defendant without bail where “no  
25 condition or combination of conditions will reasonably assure the appearance of the person as required  
26 and the safety of any other person and the community.” 18 U.S.C. § 3142(e)(1). Detention is appropriate  
27 where a defendant is either a danger to the community or a flight risk; it is not necessary to prove both.  
28

*United States v. Motamedi*, 767 F.2d 1403, 1406 (9th Cir. 1985). A finding that a defendant is a danger to the community must be supported by clear and convincing evidence. 18 U.S.C. § 3142(f)(2)(B).

### III. Argument

Because this is “an offense involving a minor victim” under 18 U.S.C. § 2252(a)(2), “it shall be presumed that no condition or combination of conditions will reasonably assure the appearance of the person as required and the safety of the community.” 18 U.S.C. § 3142(e)(3)(E). Benjamin has failed to produce credible evidence that he will not continue to remain a threat to the community. Moreover, “[t]he presumption [of detention] is not erased when a defendant proffers evidence to rebut it; rather the presumption remains in the case as an evidentiary finding militating against release, to be weighed along with other evidence relevant to factors listed in § 3142(g).” *United States v. Hir*, 517 F.3d 1081, 1086 (9th Cir. 2008). Here, all four § 3142(g) factors counsel against release.

#### A. The Instant Offense Proves that Benjamin Has a Penchant for Exploiting Children.

Benjamin began communicating with Minor Victim 1 in 2018 — when she was about 14 years old. Her age was a fact that Benjamin knew and cherished.

[Benjamin]:	I’m bot [sic] going to leave you because of your age dummy. How old are you? 16? 15? 32?
Minor Victim 1:	14 ... turning 15 on [REDACTED]
[Benjamin]:	Okay that’s fine You’re still my little girl Jeez I still love you Okay?

Benjamin’s electronic devices contained numerous sexually explicit images and videos of Minor Victim 1. These videos, which are consistent with descriptions provided by Minor Victim 1 to law enforcement, include videos of the child victim fully naked, massaging her breasts, and digitally penetrating her vagina with her fingers. During the search of his residence, Benjamin was interviewed by the FBI. He told agents that he meets many girls online through gaming platforms and then chats with them through applications such as Discord, Instagram, and Snapchat. When shown images of Minor Victim 1, Benjamin recognized her and provided her true name. He said that he believed she was 16 or 17 years old, and admitted to exchanging sexually explicit images and videos with her.

1 In addition to Minor Victim 1, Benjamin enticed several other children, and received sexually  
 2 explicit images and videos from at least two others.<sup>2</sup> Minor Victim 2 was about 13 or 14 years old when  
 3 she engaged in sexual chats and sexual videos with Benjamin. Minor Victim 3 was about 15 years old  
 4 when she sent sexually explicit images to Benjamin and masturbated on video chats with him.

5 Further, Benjamin didn't just receive child pornography from his minor victims — he made them  
 6 *produce* the pornography. He can even be seen instructing his victims and masturbating in video calls  
 7 with them. Though the complaint charges Benjamin only with receipt of child pornography, his related  
 8 conduct of producing child pornography (in potential violation of 18 U.S.C. § 2251(a)) and enticing  
 9 children to engage in unlawful sexual activity (in potential violation of 18 U.S.C. § 2422(b)) are  
 10 important to consider when evaluating the seriousness of the danger he poses.<sup>3</sup> Suicide, lifelong  
 11 symptoms of post-traumatic stress disorder, and chronic difficulties with trust and intimacy are some of  
 12 its documented consequences.<sup>4</sup>

13 B. Benjamin's Post-Search Predatory Conduct Proves that He Will Remain a Danger to  
 14 Society If Released.

15 When the FBI interviewed him in March 2020, Benjamin seemed surprised to hear that it was  
 16 illegal to obtain child pornography from minors over the Internet. But Benjamin had ample opportunity  
 17 to course correct after the FBI confronted him and seized his devices. Instead, Benjamin acquired new  
 18 devices with the help of his mother and his mother's boyfriend, and continued to engage in sexually  
 19 explicit conversations with potential minors.

20 For instance, in the months following the FBI's execution of the March search warrant,  
 21 Benjamin engaged in the following conversations with Discord User 2 — whose profile and messages  
 22 strongly indicate that she is a minor.

23 *April 22, 2020*

24 Discord 2: Why is ur game name kyle but ur discord name Jade?

25 <sup>2</sup> His phone contained evidence of multiple conversations with potential additional victims. Other  
 26 records confirm that Benjamin has a pattern of reaching out to females, several of whom are confirmed  
 minors, and engaging in enticement and grooming behavior.

27 <sup>3</sup> A letter from the parent of one of Benjamin's minor victims is being made available to the Court,  
 defense counsel and Pretrial Services in conjunction with this motion.

28 <sup>4</sup> See <https://www.scientificamerican.com/article/the-coronavirus-pandemic-puts-children-at-risk-of-online-sexual-exploitation/> (last accessed October 5, 2020).

1 [Benjamin]: Its part of a long story lol  
Discord 2: So are u a guy or a girl?  
2 [Benjamin]: Im a guy  
I think  
3 Discord 2: Okie  
[Benjamin]: Lemme check  
4 Yup still a guy  
[Benjamin]: Wait how old are you  
5 Discord 2: Guess  
How old do I seem  
6 [Benjamin]: Id say an educated guess would be *[Note: This is verbatim from Discord returns. Nothing further was reported.]*  
7 Discord 2: Yeee  
Good job  
8 I mean yeah pretty much  
[Benjamin]: Fuck im good lmao  
9  
[Benjamin]: Why are you up child  
10 I just broke up with someone a couple days ago and theyre from Texas  
11 Discord 2: Are you putting your Minecraft beds together  
[Benjamin]: Im just going over for a quick fuck in the able sisters store  
12  
*April 23, 2020*  
13 [Benjamin]: My sex dungeon  
Lots of things to use  
14 Im trying to get casting couch  
You can go fuck yourself down there LOL  
15 Ok get naked and come to dungeon  
Discord 2: Oki  
16 [Benjamin]: You wanna do thr [sic] fucking or be fucked  
Discord 2: U choose  
17 [Benjamin]: You know how to record video right  
Discord 2: U just hold it down right  
18 [Benjamin]: Yup  
It caps last 30 seconds  
19  
*April 24, 2020*  
20 [Benjamin]: When is your bday again  
Jan?  
21 You were like  
I wish youbwere [sic] younger and lived near me  
22 And it wouldnt be weird calling you daddy  
Discord 2: I hate online schooollllll  
23 My English teacher is a dick so I just dont do his work  
The only thing I can keep up with is math  
24 And sometimes science  
My school also shoved most classes together so I only have science math eng and  
25 history  
And pe on tues and thurs  
26  
[Benjamin]: You're literally gonna be like a sex toy to me  
27 Discord 2: Am I really bout to drive up to bay for a fuck  
Ur a whole 7 hours away  
28 [Benjamin]: Plus i can come down there too

1 [Benjamin]: You probably touch yourself more than me no cap

Discord 2: I never said that

2 [Benjamin]: You dont have to

Discord 2: I said I was a virgin

3 [Benjamin]: So key is to get get really wet before I thrust in

4 *April 25, 2020*

[Benjamin]: You should try lightly pinching and twisting your nipples

Twist and pull till you slip off

Grope yourself while rubbing yourself

6 Or maybe you have to hear me order you to

Discord 2: Maybe

7 [Benjamin]: How about you try doing it rn

For daddy (;

8 Discord 2: Okayyyyy

[Benjamin]: Lemme know how you like it

Are you doing okay babygirl

I dont think i have you permission to rub

10 Unless you are counting my suggestion

Discord 2: I am sorry

I haven't came yet tho

Daddy can I cum?

12 [Benjamin]: Are you like

Fully masturbating?

13 Okay switch hands and finger with your right and suck the wet off your left

Discord 2: Yes daddy

14 [Benjamin]: Good girl

I want you to do that till the wet is all off your fingers

Let me know when you finish that

Discord 2: It's all gone

16 [Benjamin]: Thats my girl

Now switch again and suck your right

17 [Benjamin]: Can i actually trust you

18 Discord 2: Yee

Where did that question come from?

19 [Benjamin]: I just

Discord 2: You won't

I would never tell anyone

20 [Benjamin]: Im an adult right

21 Discord 2: But if it makes you uncomfortable we can just be friends and talk normal until later

22 [Benjamin]: Bruh itll be again

Discord 2: You don't actually touch me

23 [Benjamin]: True..

Why do you actually want me to fuck you lmao

24 [Benjamin]: We can't treat it like a relationship okay

What's off limits for you

Besides meeting

26 Discord 2: Wym

[Benjamin]: Like what are things we arent going to do

Since phone sex is gonna be a thing

Like are we gonna send nudes etc

28 Discord 2: Uhhmmmmmm idkkkk

[Benjamin]: Youve neber [sic] send nudes huh

Discord 2: You tell me ur limits first while I think  
 [Benjamin]: I have no limit besides no saving sexual content  
 Discord 2: If we aren't saving it then should we use snapchat?  
 [Benjamin]: Yup

*April 26, 2020*  
 [Benjamin]: I kinda wanna cum but people are home  
 I can get hard  
 Why  
 Discord 2: Why can't you cum?  
 [Benjamin]: I mean i can i guess  
 Should I?  
 You want anything while i do it  
 Discord 2: Do I want nudes?  
 Sure  
 [Benjamin]: Sure thing  
 You wanna touch with me or is it too risky  
 Discord 2: I think I cannnn  
 [Benjamin]: Okie dokes  
 Pants off?  
 Discord 2: Always  
 [Benjamin]: Rub, but on the outside of your panties  
 Discord 2: Yes daddy  
 [Benjamin]: Use your other hand to play with your nipples and squeeze your tits  
 Discord 2: Yes daddyyy  
 [Benjamin]: Good girl  
 Hmmmcheck snap  
 [Benjamin]: Now you can move your panties aside and rub your clit  
 Discord 2: Thank you daddy  
 [Benjamin]: You think you can show me putting one finger in?  
 Discord 2: Yessss  
 [Benjamin]: Good girl

*April 30, 2020*

[Benjamin]: Shower picks sc

*May 5, 2020*

Discord 2: Maybe I am actually good at deepthroating lmao

[Benjamin]: Hmmmmmm  
 I guess we'll see when i fuck you right?

Thus, Benjamin is undeterred by the law and has proven himself capable of finding the means — including with the help of his mother, who was assigned custodian by the magistrate judge, and her boyfriend, the only other proposed custodian — to continue endangering children upon release.

C. The Conditions of Release in the Magistrate Judge's Order Do Not Mitigate Danger.

In ordering pretrial release, the magistrate judge agreed with the recommendation of Pretrial Services that Benjamin be released under certain conditions. But those special conditions are insufficient to mitigate the danger that Benjamin presents.



1 First, Benjamin’s mother, Ms. Guevarro, is not qualified to serve as the “eyes and ears” of the  
 2 Court. According to interviews, she and Benjamin do not have a close relationship and do not interact  
 3 much despite the fact that Benjamin lives with her, her boyfriend James Tan, and three of Benjamin’s  
 4 siblings (two of whom are minors). More concerning, it was Ms. Guevarro who purchased a new cell  
 5 phone for her son and it was her boyfriend who gave him money to purchase new computer parts —  
 6 *after* Ms. Guevarro and Mr. Tan had seen a copy of the search warrant, had their residence searched, and  
 7 been informed of the alleged illegal conduct.

8 Second, a night curfew (or any curfew) does not mitigate the danger in this case, which manifests  
 9 not on streets but online. Benjamin is unemployed and appears to seldom leave his home anyway. A  
 10 curfew would not prevent him from staying home in his bedroom and sexually enticing children over the  
 11 Internet.

12 Third, his allowance of two electronic devices are problematic for obvious reasons. Benjamin is  
 13 not employed; he is not in school; and he has said that he has no friends outside the Internet. As a result,  
 14 allowing Benjamin access to electronic devices though he has no educational, economic, or social need  
 15 for them is akin to allowing an alleged shooter access to a firearm.

16 D. The § 3142(g) Factors Weigh Against Pretrial Release.

17 Even if Benjamin were to rebut the presumption of pretrial detention, the § 3142(g) factors  
 18 weigh against pretrial release in this case. *Cf. United States v. Marigny*, No. 20-MJ-70755-MAG-1, 2020  
 19 WL 4260622, at \*1 (N.D. Cal. July 24, 2020) (granting motion to revoke pretrial release order where  
 20 defendant masqueraded as a teenage girl on Instagram to induce, entice, persuade, and use preteen and  
 21 teenage boys to create and send him visual depictions of sexually explicit conduct, and to engage in  
 22 sexual conduct.)

23 The nature and circumstances of the offense charged. Congress has recognized that, “where  
 24 children are used in its production, child pornography permanently records the victim’s abuse, and its  
 25 continued existence causes the child victims of sexual abuse continuing harm by haunting those children  
 26 in future years.” Child Pornography Prevention Act of 1996, Pub. L. No. 104-208 § 121, 110 Stat. at  
 27 3009, 3009-27 (1996). Additionally, the Supreme Court has said that child pornography “produces  
 28 concrete and devastating harms for real, identifiable victims.” *Paroline v. United States*, 572 U.S. 434,



457 (2014). Courts considering the matter have thus found that even possession of child pornography — let alone receipt after enticement and production — weighs in favor of detention. *See United States v. Bell*, No. SACR 08-00087-MMM, 2008 WL 11411709, at \*2 (C.D. Cal. June 6, 2008) (collecting cases).

Weight of the evidence. Though the “least important of the various factors,” courts must consider the evidence in terms of the likelihood that defendant will pose a danger. *Hir*, 517 F.3d at 1090. As discussed above, the weight of the evidence against Benjamin is considerable. It includes his receiving child pornography from at least three minor victims, as well as his admissions relating to Minor Victim 1.

Defendant’s history and characteristics. Benjamin’s decision to continue engaging in sexually explicit conversations with potential minors even after the FBI executed a search warrant in his home confirms that he is a predator who, regardless of the conditions imposed, will remain a threat to children if released. Additionally, in interviews, both Benjamin and his mother have stated that the two are not close, and that Benjamin does not have much interaction with her or his other family members.

Nature and seriousness of the danger to the community. Danger is no less real simply because it presents itself online. The potential further commission of similar offenses against minor victims presents a grave risk to potential victims and the community at large. The production, collection, and/or transmission of child pornography inflicts lifelong damage on its victims. Benjamin’s communications with minor victims reflect a mastery over techniques that are known to be used by sexual predators of children, such as asserting himself as an authority figure, using romantic or intimate language, engaging in sexually explicit conversations, indicating a desire to meet in person, and using guilt to deter children from disengaging from contact. His conduct therefore poses no less danger than — and can be as lethal as — loaded weapons or addictive drugs.

Finally, nothing about the COVID-19 pandemic mitigates the danger that Benjamin poses if released. To the contrary, limitations wrought by the pandemic make it *more* likely that he will successfully exploit his home- and technology-bound minor victims. Further, the government is aware of no facts (such as advanced age or medical condition) that would place Benjamin at greater risk of developing a serious illness if he contracted COVID-19.

\*\*\*\*\*

Because there are no conditions of release that could reasonably assure the safety of the community, in particular Benjamin's minor victims, the United States requests that he be detained.

**Motion to Revoke Release Order and Order Defendant Detained**

On October 8, 2020, Magistrate Judge Cousins ordered the defendant released, with conditions, on a \$25,000 unsecured bond, signed by a surety and requiring the surety also to be a custodian. Upon the government's request, Magistrate Judge Cousins stayed the release order for approximately 24 hours, until noon on October 9, 2020.

The parties are scheduled to appear before this Court on October 14, 2020. To avoid premature release of defendant before this Court has had the opportunity to review Magistrate Judge Cousins's release order, the United States requests that the release order be stayed until October 14, 2020.

DATED: October 8, 2020

Yours sincerely,

DAVID L. ANDERSON  
United States Attorney

/s/  
MOHIT GOURISARIA  
Assistant United States Attorney

1 DAVID L. ANDERSON (CABN 149604)  
United States Attorney

2 HALLIE HOFFMAN (CABN 210020)  
3 Chief, Criminal Division

4 MOHIT GOURISARIA (CABN 320754)  
Assistant United States Attorney

5 450 Golden Gate Avenue, Box 36055  
6 San Francisco, California 94102-3495  
7 Telephone: (415) 436-7063  
8 Fax: (415) 436-7234  
mohit.gourisaria@usdoj.gov

Attorneys for United States of America

9 UNITED STATES DISTRICT COURT  
10 NORTHERN DISTRICT OF CALIFORNIA  
11 SAN FRANCISCO DIVISION  
12

13 UNITED STATES OF AMERICA,	)	CASE NO. CR 20-71406 MAG
	)	
14 Plaintiff,	)	[PROPOSED] ORDER STAYING ORDER
	)	GRANTING RELEASE OF DEFENDANT
15 v.	)	
	)	
16 ADRIAN KYLE BENJAMIN,	)	
	)	
17 Defendant	)	
<hr/>		

18  
19 For good cause shown, the United States' application for a stay of Magistrate Judge Nathanael  
20 Cousins's order granting release to defendant Adrian Kyle Benjamin in the above-captioned case is  
21 GRANTED. The release order is STAYED until October 14, 2020, when the parties will appear before  
22 this Court. It is further ORDERED that defendant is to remain in the custody of the United States  
23 Marshals Service until further order of this Court.

24  
25 DATED:

26 HONORABLE EDWARD M. CHEN  
27 United States District Judge  
28